

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

John F. Comito,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1172
Parcel No. 120/04362-002-000

On May 6, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant John F. Comito was self-represented and did not appear at hearing or submit evidence in support of his petition. The Polk County Board of Review designated Assistant County Attorney David Hibbard as its legal representative and submitted evidence in support of its decision. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

John F. Comito, owner of property located at 7010 SW 11th Street, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$137,800; representing \$17,200 in land value and \$120,600 in the improvement value. Comito protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b).

The Board of Review reduced the assessed value to a total of \$125,800; representing \$17,200 in land value and \$108,600 in building value stating, "the market data did not support the assessment."

Comito then appealed to this Board on the same ground. He seeks \$5300 in relief and values the property at \$120,500.

According to the property record card, the subject property is a two-story, frame duplex built in 1978 with 1120 square foot of main living area. The subject site is 0.234 acres.

Comito did not appear for the hearing he requested nor did he submit additional evidence.

The Board of Review submitted an appraisal that it commissioned. Michael W. Swaim testified at hearing regarding the appraisal process. Swaim inspected the property and has a signed date of April, 2010, but valued the property retrospectively as of January 1, 2009, for this appeal. According to the appraisal, the property has typical physical depreciation for a multi-family unit when the subject property was built. The three comparable sales had adjusted ranges from \$130,000 to \$135,000. Swaim's final reconciliation of value for the subject property was \$134,000 as of the January 1, 2009, assessment date. Swaim's value of \$134,000 supports the assessed value at \$125,800.

Reviewing all the evidence, we find substantial evidence is lacking to support Comito's claim that his property was assessed for more than authorized by law as of January 1, 2009.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*


Appeal Bd., 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available of market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

Viewing the evidence as a whole, we determine that substantial evidence is lacking to support Comito's claim of over-assessment as of January 1, 2009. The Swaim appraisal, which we find the most credible evidence of the property's fair market value, supports the assessment. We, therefore, affirm the Comito property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$125,800; representing \$17,200 in land value and \$108,600 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment of the Comito property, located at 7010 SW 11th Street, Des Moines, Iowa, as determined by the Polk County Board of Review, is affirmed.

Dated this 25 day of May, 2010.


Richard Stradley, Presiding Officer


Karen Oberman, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-25</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
Signature	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	